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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joshua Trever Lee Breshears,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.
14

No. CV-20-00209-TUC-DCB

No. CR-11-03402-TUC-DCB(LAB)

ORDER

15 On May 14, 2020, Petitioner Breshears filed a Motion to Reduce Sentence Pursuant
16 to 28 U.S.C. 2255 (Doc. 393) in CR 11-3402 TUC DCB(LAB), which was docketed as a
17 Motion to Vacate Sentence (Doc. 395). A motion brought pursuant to 28 U.S.C. § 2255, is
18 a civil motion, therefore, the Clerk of the Court opened CV 20-209 TUC DCB.

19 Title 28 of the United States Code, Section 2255 provides for collateral review of
20 Petitioner's sentence as follows:

21 A prisoner in custody under sentence of a court established by Act of
22 Congress claiming the right to be released upon the ground that the sentence
23 was imposed in violation of the Constitution or law of the United States, or
24 that the court was without jurisdiction to impose such sentence, or that the
sentence was in excess of the maximum authorized by law, or is otherwise
subject to collateral attack, may move the court which imposed the sentence
to vacate, set aside or correct the sentence. A motion for such relief may be
made at any time.

25 28 U.S.C. § 2255.

26 On February 25, 2020, this Court sentenced defendant to 18 months imprisonment,
27 of which 10 months were to be run concurrent with the state case. Defendant "motions
28 this Court for the following relief: Mr. Breshears requests that he be resentenced to 8

1 months in custody.” Motion (Doc. 1) at 1.) The Bureau of Prisons cannot calculate his
2 prison sentence to accommodate the concurrent sentence because the state sentence had
3 already been served when Petitioner was remanded to federal custody to serve his
4 sentence here. The Government has reviewed the Petition and does not object. The
5 Government agrees that the “Petitioner’s Sentence needs correction in order to carry into
6 effect the Court’s intention and does not oppose the Motion.” (Response (Doc. 5) at 1.)

7 **Accordingly,**


8 **IT IS ORDERED** that the Motion to Vacate the Sentence (Doc. 1) in CV 20-209
9 TUC DCB and CR 11-3402 TUC DCB (Docs. 393, 395) are GRANTED.

10 **IT IS FURTHER ORDERED** that the Defendant is resentenced to 8 months, and
11 the Clerk of the Court shall amend the Judgment of Conviction, accordingly.

12 **IT IS FURTHER ORDERED** that the Motion to Withdraw as Counsel (Doc. 4) in
13 CV 20-209 TUC DCB is GRANTED.

14 Dated this 17th day of August, 2020.

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David C. Bury
United States District Judge